

AMERICAN LAWYERS IN BUSINESS AND IN POLITICS

Their Social Backgrounds and Early Training

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I

It long ago became fashionable to describe business as an organized system of force and fraud. Nineteenth century law did little to control this. Even in the so-called robber baron period in the latter part of the century much business "fraud" was likely to be defensible under the law then current and much business "force" to be beyond legal remedies as then applied. In the next era—which we may label bureaucratic¹—, statute, decision, and administrative decree became increasingly hostile to business enterprise, but to a considerably larger extent big business managers tried to steer their enterprises, as they often explained, "well within the law."² This impelled them, on the one hand (the better to divert the popular anti-business feeling from making the law and its enforcement too strict) to develop increasingly systematic contacts with lawyers in public office; and, on the other, as the strictness of the law increased, to have growing recourse to private legal advice in the making of day to day business decisions. The demand for such advice, indeed, became so great that the best paid metropolitan lawyers almost without exception after 1900 made business counseling the focus of their work, at the expense of traditional advocacy; and many lawyers yielded to the blandishments of the corporations to become house counsel and even regular business executives themselves.³

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1. For justification of the use of this term, see Miller, *American Historians and the Business Elite*, 9 JOUR. ECON. HIST. 187–88 (1949).

2. For an intensive and costly effort in this direction as early as 1910 see PROCEEDINGS OF THE RAILROAD ATTORNEYS' CONFERENCE TO CONSIDER AND DISCUSS QUESTIONS ARISING UNDER THE MANN-ELKINS BILL (1910).

3. In 1920, Paul D. Cravath commented on the "striking phenomenon of the New York bar" that "advocacy has become almost a lost art." He thought this "a great pity, for with [its] decline our profession has suffered a real loss of glory and charm." This decline he attributed to "the materialism of our age" in which a young man must secure an income large enough to gain "those rewards of metropolitan life which only money will buy. He therefore becomes a lawyer of affairs. He seeks to become the adviser of great corporations and firms that deal with large financial transactions because it is for such services that the most liberal compensation is paid . . ." 2 SWAINE, *THE CRAVATH FIRM* 265–66 (1948). See also Berle, *Modern Legal Profession*, 9 ENCYC. SOC. SC. 340–41 (1933); DOS PASSOS, *THE AMERICAN LAWYER* (1907); *Lawyers Looking at You*, 3 FORTUNE 61 (Jan. 1931).

On the development of the house counsel, see the study done for the Survey of the Legal Profession by Charles S. Maddock and published along with six case studies as CORPORATE LEGAL DEPARTMENTS, No. 39, STUDIES IN BUSINESS POLICY, NAT. INDUST. CONF. BD. (1950).

These twin tendencies—the growing routinization of business politics and the growing representation of lawyers in business management—are largely twentieth-century developments. But in politics they can easily be traced back to the czardom of Speaker Thomas B. Reed in the House of Representatives, to the suzerainty of Nelson W. Aldrich over the Senate,⁴ to the reign of Melville W. Fuller on the United States Supreme Court; and in business to the regimes of such solicitors as George F. Baer, an early “Morgan lawyer,” or Adrian H. Joline, “the ablest practical master of reorganizations we have ever had,”⁵ who sometimes headed up the directorates of his salvaged firms, or Charles H. Tweed, son-in-law of William M. Evarts and erstwhile member of Southmayd and Choate, who became general counsel for the Huntington enterprises and partner in Speyer and Company, investment bankers.

Such men were in the van of a quiet revolution in business and politics and their reciprocal relations. This in itself may serve admirably as justification, if the prevailing blankness of present information were not enough, for writing of their social backgrounds and early training. For this subject, nevertheless, the particular selection of lawyers examined here could perhaps easily be improved upon, so that a further word in explanation of this sample itself should be added.

This paper is actually the fourth in a series concerned primarily with leaders in American business and politics in the decade 1901–1910.⁶ It is largely because of the historical circumstances outlined in the first two paragraphs above that lawyers enter the work at all. This conceivably could add to rather than diminish the strength of this sample of lawyers in business and politics, but it should be kept clear in either case that the only lawyers considered here are those who held high public or business office early in this century. It was on the basis of such office-holding in the first instance that the whole group of business and political leaders from which these lawyers are drawn was selected.⁷ Hence these lawyers are of that class only, but perhaps

4. Aldrich, of course, was not a lawyer himself, but a businessman; on his relations with lawyers in the inner circle of the Senate, see the very suggestive chapter IX in STEPHENSON, NELSON W. ALDRICH 132–37 (1930). See also HURST, *THE GROWTH OF AMERICAN LAW* 45 (1950).

5. DEWING, *THE FINANCIAL POLICY OF CORPORATIONS* 1084 (3rd rev. ed. 1934). See also, 1 STETSON *et al.*, *SOME LEGAL PHASES OF CORPORATE FINANCING, REORGANIZATION, AND REGULATION* 153 (1930).

6. The first of these is Miller, *supra* note 1; the second, Miller, *The Recruitment of the American Business Elite*, 64 Q. J. Econ. 242 (1950); the third, Miller, *The Business Elite in Business Bureaucracies*, to be published in 1951 in *MEN IN BUSINESS* (Miller ed.) a book of essays on entrepreneurial history.

7. There is a full discussion of the mode of selection of the over-all sample of business leaders and a full list, with company and position, of the 190 men in the sample, in Miller, *supra* note 1, at 189–96. Here it is sufficient to point out that each of these 190 men (and hence each of the lawyers in the present study taken from the business sample) was either

representative of that class, which attained eminence not in the law alone (some in fact did not become eminent lawyers), but in politics or in business, between which the law itself might easily be conceived of as a natural bridge.⁸

president or chairman in the decade 1901-1910 of at least one of the largest American business corporations, or was a partner in one of the leading unincorporated investment banking houses. The over-all political sample of 188 men includes all the presidents, vice-presidents, cabinet members, and United States Supreme Court judges in office in this decade, these being 44 men; plus 67 United States Senators and 77 Representatives, selected from the whole group in each house largely on the basis of committee chairmanships in the 57th through the 61st Congresses. For more on this, see *id.* at 191 n. 22.

8. The following is the list of twenty-seven lawyers found among the business leaders:

| | | |
|----------------------|--------------------|---------------------|
| Alexander, James W. | Fowler, Thomas P. | McCarter, Thomas N. |
| Baer, George F. | Gary, Elbert H. | McCurdy, Richard A. |
| Bancroft, William A. | Gaston, William A. | Peabody, Charles A. |
| Colt, Samuel P. | Green, Adolphus W. | Pierce, Winslow S. |
| Cortelyou, George B. | Herrin, William F. | Sheldon, Edward W. |
| Depew, Chauncy M. | Joline, Adrian H. | Shonts, Theodore P. |
| Elliott, Warren G. | Lincoln, Robert T. | Tweed, Charles H. |
| Finney, Frederick N. | Lovett, Robert S. | Walker, Roberts |
| Fish, Frederick P. | Mather, Robert | Wetmore, Charles W. |

The following is the list of sixty-one lawyers from the political sample who were, as in the cases of Stephen B. Elkins, Charles W. F. Dick or Franklin MacVeagh, notably big businessmen themselves as well as being lawyers and politicians; or who were, as in the cases of Elihu Root, George W. Wickersham or Philander C. Knox, outstanding and very close counsel to big business enterprises. Naturally not all of the men listed here were as eminent as these named; a few, indeed, might be judged marginal cases. Compared to the political lawyers in the list that follows this one, however, these men appeared to me to have been those in politics with the closest relations with big business in other than straight political capacities.

| | | |
|------------------------|----------------------|-----------------------|
| Allison, William B. | Hoar, George F. | Proctor, Redfield |
| Ballinger, Richard A. | Hopkins, Albert J. | Quarles, Joseph V. |
| Boutell, Henry S. | Hull, John A. T. | Reeves, Walter |
| Bradley, William O. | Kittredge, Alfred B. | Root, Elihu |
| Brown, Henry B. | Knox, Philander C. | Shaw, Leslie M. |
| Burnham, Henry E. | Knox, William S. | Sherman, James S. |
| Burton, Theodore E. | Lacey, John F. | Shiras, George, Jr. |
| Dillingham, William P. | Long, Chester I. | Simon, Joseph |
| Cannon, Joseph G. | Long, John D. | Skiles, William W. |
| Crawford, Coe I. | MacVeagh, Franklin | Smith, William A. |
| Dick, Charles W. F. | Mann, James R. | Spooner, John C. |
| Dickinson, Jacob M. | Mason, William E. | Steele, George W. |
| Elkins, Stephen B. | McKenna, Joseph | Stewart, William M. |
| Fairbanks, Charles W. | Metcalf, Victor H. | Straus, Oscar S. |
| Flint, Frank P. | Mondell, Frank W. | Sutherland, George |
| Foraker, Joseph B. | Nagel, Charles | Vreeland, Edward B. |
| Foss, George E. | Payne, Sereno E. | White, Edward D. |
| Fowler, Charles N. | Parker, Richard W. | Wickersham, George W. |
| Fuller, Melville W. | Peckham, Rufus W. | Wright, Luke E. |
| Hale, Eugene | Penrose, Boies | |
| Hitchcock, Frank H. | Platt, Orville H. | |

Of the sixty-seven remaining lawyers from the political group, it is illuminating to note,

II

In the first of these earlier papers, given in part to a comparison of the American business and political elites, I showed that the over-all samples of 190 business leaders and 188 leaders in national politics had some striking social characteristics in common.⁹ Few in either group were immigrants who had made good, and even of these almost none was a *poor* immigrant. Three-fourths of these men were of colonial American ancestry and more than half were of families that had settled

just about half were in the House as compared to only 28 percent from the list just above. While 54 percent of the above list were in political jobs for more than twenty years, this was true of as many as 68 percent of the politicians to be listed next. Only 34 percent of the lawyers with big business connections were appointed or elected to their peak political position from another political job. Most of them came directly to the political top from law practice. Of the following list, however, 51 percent rose to the top through the political hierarchy. These differences in political experience would seem to go toward confirming the differences in business and legal experiences imputed here to these two distinct groups of political lawyers. It should be noted, too, that included in the following list are not only the political hacks, party wheelhorses, reformers, and googooos, who happened to be lawyers, but also such political intellectuals as John Hay, Henry Cabot Lodge, Theodore Roosevelt, Oliver Wendell Holmes, who, though rich themselves, found in business, as Hay once put it, but "a dreary waste of heartless materialism." 1 THAYER, JOHN HAY 56 (1915).

| | | |
|------------------------|-------------------------|---------------------|
| Alexander, DeAlva S. | Fulton, Charles W. | McGuire, Bird S. |
| Beveridge, Albert J. | Garfield, James | McKinley, William |
| Bonaparte, Charles J. | Gillett, Frederick H. | Miller, James M. |
| Borah, William E. | Graff, Joseph V. | Moody, William H. |
| Brewer, David J. | Gray, Horace | Morgan, John T. |
| Brown, Norris | Grosvenor, Charles H. | Mudd, Sydney E. |
| Burke, Charles H. | Hamilton, Edward L. | Nelson, Knute |
| Burrows, Julius C. | Harlan, John M. | Overstreet, Jesse |
| Calderhead, William A. | Hawley, Joseph R. | Perkins, James B. |
| Carter, Thomas H. | Hay, John M. | Prince, George W. |
| Clapp, Moses E. | Hemenway, James A. | Pritchard, Jeter C. |
| Clark, Clarence D. | Henderson, David B. | Quay, Matthew S. |
| Cousins, Robert G. | Hepburn, William P. | Ray, George W. |
| Crumpacker, Edgar D. | Heyburn, Weldon B. | Roosevelt, Theodore |
| Cullom, Shelby M. | Holmes, Oliver W. | Smith, Samuel W. |
| Cummins, Albert B. | Jenkins, John J. | Stewart, James F. |
| Currier, Frank D. | Knapp, Charles L. | Taft, William H. |
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| Day, William R. | Littlefield, Charles E. | Wanger, Irving P. |
| Dolliver, Jonathan P. | Lodge, Henry C. | Warnock, William R. |
| Foster, David J. | McComas, Louis E. | |
| Frye, William P. | McCumber, Porter J. | |

9. It would be impossible in the space available here to name in detail the sources used for information about these men. Who's whos, encyclopedias, directories, individual and group biographies, newspaper and magazine files and the "morgues" of a few newspapers and magazines all proved useful as did a rather voluminous correspondence with the families of many of these men, and with local historical societies, libraries, and the companies of the business leaders.

in America in the seventeenth century. Four out of five, moreover, could point to British and more than half to English forebears.

Such homogeneity in origins, however, while auguring well for the solidarity of these elites—especially as compared with the whole population, from which they were widely divorced¹⁰—appears not to have been sufficient to avert the development of broad differences between them in religious heritage, early geographical and community environment, formal education, father's status, and similar categories. Such differences, in turn, as well as some of the likenesses, seem to have been carried over (the differences sometimes considerably enlarged) to the lawyers recruited for the present study from each of these elite groups.

Where differences between the original over-all business and political samples do occur, they are almost always such as to show the business elite as the more favored. Thus it is not surprising to discover that the lawyers found for this study in the business elite, as tables below will show, were the most favorably born and bred of all. The lawyers among the political elite, moreover, who had the closest direct relations with big business—either as practicing lawyers as or big businessmen themselves—were more highly favored in their origins and upbringing than the rest of those in high political office.

III

Even where there is a considerable degree of similarity among all of these lawyers—as in the fact that no more than 6 percent of any of the three groups were foreign born, or that no more than 12 percent were first—or second-generation Americans, or that only between 12 and 18 percent were of other than British origin¹¹ in the paternal line—more detailed analysis shows marked differences of importance. There were, for example, no men at all of foreign birth among the lawyers in the business sample; the latter, moreover, as Table I shows, were of Eastern birth appreciably more often than those in the other two groups. They were also considerably more likely to be of old family, even though among *all* of these lawyers the paternal lines generally were old enough to be unusual in the whole population.

From this it should perhaps follow that the lawyers in the business sample would also have been English (not simply British) origins more frequently than the others. But that appears not to have been the case, those of Scottish descent among them (from Scotland and the North of Ireland), as Table III shows, being surprisingly numerous.

In religious heritage, again, all of these lawyers were rather uniformly

10. A comparison of my findings about the business leaders and the whole population is the core of Miller, *The Recruitment of the American Business Elite*, 64 Q. J. ECON. 242 (1950). All comparisons made in the present study between the lawyers and the population are based on data about the latter in that essay.

11. British here does not include South Irish.

TABLE I
AMERICAN BUSINESS AND POLITICAL
LAWYERS BY REGION OF BIRTHPLACE

| <i>Birthplace*</i> | <i>Big Businessmen- Lawyers</i> | <i>Lawyers in Politics with big business connections</i> | <i>Lawyers in Politics with no big business connections</i> | <i>Total Lawyers</i> |
|------------------------|---|--|---|--------------------------|
| | (percent) | (percent) | (percent) | (percent) |
| East | 70 | 54 | 39 | 50 |
| West | 23 | 30 | 43 | 34 |
| South | 7 | 11 | 12 | 11 |
| Total United States | 100 | 95 | 94 | 95 |
| Foreign | 0 | 5 | 6 | 5 |
| Total cases (=100%) | 27 | 61 | 67 | 155 |

* These are Census regions. Combined in "East" are New England and Middle Atlantic; in "West," East North Central, West North Central, Mountain, and Pacific; in "South," South Atlantic, South Central, West South Central.

TABLE II
AMERICAN BUSINESS AND POLITICAL LAWYERS
BY GENERATION OF PATERNAL LINE IN AMERICA

| <i>Generation</i> | <i>Big Businessmen- Lawyers</i> | <i>Lawyers in Politics with big business connections</i> | <i>Lawyers in Politics with no big business connections</i> | <i>Total Lawyers</i> |
|-------------------------|---|--|---|--------------------------|
| | (percent) | (percent) | (percent) | (percent) |
| First or Second | 4 | 12 | 12 | 10 |
| Third | 0 | 13 | 10 | 10 |
| Fourth or older | 96 | 75 | 78 | 80 |
| Total cases (=100%)* | 25 | 59 | 51 | 135 |

* Where "total cases" are fewer than in Table I, difference is due to lack of information for the missing number.

Protestant, but again the sectarian differences are illuminating. As Table IV shows, more than half of the lawyers from the business sample were Episcopalian or Presbyterian, and this in a society in which both denominations together could claim scarcely one in five of the whole population. If Congregationalism be included with the elite sects, this disproportion becomes greater still. Obversely, while Methodists and Baptists, traditionally middle and lower class, accounted for more than half of the American population, in none of these groups of lawyers, as the table indicates, did they number more than 24 percent.

IV

In 1920, Paul D. Cravath, long a luminary of the "financial bar" and by then its acknowledged dean, said in a talk at Harvard Law School that " 'family influence, social friendships and wealth count for little' " in helping a young lawyer to the pinnacle of a big business practice. "He emphasized," according to Robert T. Swaine, his one-

III
AMERICAN BUSINESS AND POLITICAL LAWYERS
BY NATIONAL ORIGIN OF PATERNAL FAMILY

| <i>Family Origin*</i> | <i>Big Businessmen- Lawyers</i> | <i>Lawyers in Politics with big business connections</i> | <i>Lawyers in Politics with no big business connections</i> | <i>Total Lawyers</i> |
|--------------------------------------|---|--|---|--------------------------|
| | (percent) | (percent) | (percent) | (percent) |
| England and Wales | 59 | 70 | 45 | 58 |
| Scotland and the North of Ireland | 29 | 16 | 29 | 24 |
| Other British Empire† | 0 | 2 | 8 | 4 |
| Total British Empire | 88 | 88 | 82 | 86 |
| South of Ireland | 0 | 3 | 4 | 3 |
| Germany | 4 | 7 | 4 | 5 |
| Other Countries | 8 | 2 | 10 | 6 |
| Total cases (=100%) | 24 | 56 | 51 | 131 |

* Or country of lawyer's own origin if he was the first in his family to settle in America.
In either case, *last country* before settlement in America.

† Excluding the South of Ireland.

TABLE IV
AMERICAN BUSINESS AND POLITICAL
LAWYERS BY RELIGIOUS HERITAGE

| <i>Denomination*</i> | <i>Big Businessmen- Lawyers</i> | <i>Lawyers in Politics with big business connections</i> | <i>Lawyers in Politics with no big business connections</i> | <i>Total Lawyers</i> |
|---------------------------|---|--|---|--------------------------|
| | (percent) | (percent) | (percent) | (percent) |
| Episcopalian | 28 | 16 | 7 | 14 |
| Presbyterian | 24 | 9 | 22 | 17 |
| Congregationalist | 8 | 12 | 8 | 10 |
| Methodist | 16 | 10 | 17 | 14 |
| Baptist | 0 | 5 | 7 | 5 |
| Other Protestant | 12 | 12 | 10 | 11 |
| Protestant Unspecified | 8 | 24 | 22 | 21 |
| Total Protestant | 96 | 88 | 93 | 92 |
| Catholic | 4 | 5 | 5 | 5 |
| Jewish | 0 | 3 | 0 | 1 |
| Other or none | 0 | 4 | 2 | 2 |
| Total Cases (=100%) | 25 | 58 | 59 | 142 |

* In almost all instances this is the religion of the leader himself and most likely of his family as well. In a few instances where a shift in religion is known to have occurred, only the old religion is used.

time partner and historian of *The Cravath Firm*, the "large number of successful lawyers who had come to New York from small places and 'worked up from the bottom of the ladder without having any advantage of position or acquaintance.'" ¹²

That Cravath might have gone on to name a galaxy of lawyers, not least among them himself and Swaine, who had risen as he said they had, no one will deny. Even most of *these* men, nevertheless, must have shared the national, the religious, the old family—the British, Protestant, Colonial—heritage that, in a society already on the way to becoming today's throbbing mosaic of complex patterns of segregation, would of itself have made them self-consciously of the elite and lent practicality to their professional aspirations.

Such a heritage, indeed, might be thought of—so almost universal was it among all the lawyers studied here—simply as the bottom requisite, as the floor from which, generally speaking, only young men so endowed might raise edifices among their professional peers. But if the material in the tables that follow is to be credited as reflecting reality more adequately than the animadversions of Cravath and Swaine, to reach their professional goals even such young men must, on the whole, have had other endowments as well. This, as has been said, is especially reflected in the data on the lawyers from the sample of business leaders—on those, that is, most akin to the “financial bar” that Cravath singled out for notice. It is only slightly less true, however, of those lawyers in politics who were most closely associated with the financial community.

Take first this “coming from small places.” Most of the lawyers in all three groups, but especially in both groups of politicians, did, of course, come from such places; how avoid it when in 1850, the census year nearest the date of birth of most of these men, the United States was so largely made up of farms, rural villages, and small towns? In that year 87.5 percent of the whole population resided in places with fewer than 8,000 persons. What is more striking, therefore, than the fact that such places supplied political lawyers in about the same proportion as their share of the whole population is that they supplied only 59 percent of the lawyers in the big business group. Forty-one percent of the latter, compared to but 12.5 percent of the nation in 1850, were from larger cities, 15 percent from the few metropolitan centers having populations in excess of 100,000.

To an unusual degree from urban centers, centers of wealth and power, of educational and professional opportunities, these lawyers were also largely from families in which such wealth and power were likely to be concentrated and the stimulus toward a professional career most direct. This again is most frequently true of the lawyers from the business sample.

That for most of these men, moreover, the opportunities for such professional development need not merely be inferred but can be documented, is shown by the statistics on their education. In an age when the overwhelming majority of their contemporaries in the American

TABLE V
AMERICAN BUSINESS AND POLITICAL LAWYERS
BY SIZE OF BIRTHPLACE

| <i>Size of Birthplace*</i> | <i>Big Businessmen- Lawyers</i> | <i>Lawyers in Politics with big business connections</i> | <i>Lawyers in Politics with no big business connections</i> | <i>Total Lawyers</i> |
|----------------------------|---|--|---|--------------------------|
| | (percent) | (percent) | (percent) | (percent) |
| Under 8,000 | 59 | 84 | 89 | 82 |
| 8,000 to 100,000 | 26 } 41 | 11 | 5 | 11 |
| Over 100,000 | 15 | 5 | 6 | 7 |
| Total cases (= 100%) | 27 | 58 | 65 | 150 |

* Size of birthplace here is size as of census nearest actual year of subject's birth and not census of 1850 except where that is nearest.

TABLE VI
AMERICAN BUSINESS AND POLITICAL LAWYERS
BY FATHER'S OCCUPATION

| <i>Occupation*</i> | <i>Big Businessmen- Lawyers</i> | <i>Lawyers in Politics with big business connections</i> | <i>Lawyers in Politics with no big business connections</i> | <i>Total Lawyers</i> |
|------------------------------|---|--|---|--------------------------|
| | (percent) | (percent) | (percent) | (percent) |
| Businessman | 32 } 60 | 28 } 56 | 31 } 41 | 30 } 51 |
| Lawyer or Public Official | 28 | 28 | 10 | 21 |
| Other Professional | 24 | 10 | 17 | 16 |
| Farmer | 16 | 32 | 40 | 32 |
| Worker | 0 | 2 | 2 | 1 |
| Total cases (= 100%) | 25 | 57 | 58 | 142 |

*Some fathers engaged in more than one occupation. The one used here was dominant in the period in which each man was raised. In only a few instances was this not clear, so a choice was made more or less arbitrarily by which business (including higher company positions as well as company ownership) took precedence over farming and professional, or public official over both. This conforms roughly to the ascending order of status used in classifying occupations today. "Public Official" includes professional politicians even if not office holders. "Other Professional" is made up of a scattering of engineers and clergymen, doctors, writers, etc.

population, or indeed only in the male part of it (females generally having far less education still), never progressed beyond grade school or its equivalent, almost 9 out of 10 of these lawyers in the business sample and an extraordinary proportion of those in the political group as well had gone to college.¹³

Business and professional men's sons, of course, often were poor boys; and poor boys sometimes went to college and became lawyers—even though a college education, in this era, was nowhere a prerequisite

13. In 1870, the census year nearest that in which most of these college-trained lawyers would have been in attendance, there were in the United States 2,067,144 white males between the ages of 15 and 20. That year there were 67,350 males in the colleges and universities of the country—a scant 3.3 percent of the males of college age. See Miller, *The Recruitment of the American Business Elite*, 64 Q. J. ECON. 242 (1950).

TABLE VII
AMERICAN BUSINESS AND POLITICAL LEADERS BY
HIGHEST EDUCATIONAL LEVEL ATTAINED

| <i>Education*</i> | <i>Big Businessmen- Lawyers</i> | <i>Lawyers in Politics with big business connections</i> | <i>Lawyers in Politics with no big business connections</i> | <i>Total Lawyers</i> |
|-------------------------|---|--|---|--------------------------|
| | (percent) | (percent) | (percent) | (percent) |
| Grammar School | 0 | 8 | 13 | 9 |
| High School | 11 | 22 | 25 | 21 |
| College | 89 | 70 | 62 | 70 |
| Total cases (= 100%) | 27 | 60 | 67 | 154 |

* I have reduced the many types of older schools to this modern terminology, including in "grammar school" institutions called by that name as well as district, public, common, and similar schools; in "high school", academies and others of similar rank. Counted among grammar-school boys are those who had little or no formal education as well as graduates; among high school boys, all those who attended, whether graduates or not. A few who had private tutors well into their teens but did not attend college are counted with the high-school group. "College" includes all who attended.

TABLE VIII
AMERICAN BUSINESS AND POLITICAL
LAWYERS BY STATUS OF FAMILY

| <i>Status*</i> | <i>Big Businessmen- Lawyers</i> | <i>Lawyers in Politics with big business connections</i> | <i>Lawyers in Politics with no big business connections</i> | <i>Total Lawyers</i> |
|-------------------------|---|--|---|--------------------------|
| | (percent) | (percent) | (percent) | (percent) |
| Upper | 67 | 42 | 30 | 41 |
| Middle | 30 | 53 | 57 | 51 |
| Lower | 3 | 5 | 13 | 8 |
| Total cases (= 100%) | 27 | 60 | 63 | 150 |

* The problem of describing the class structure of the American population around the middle of the nineteenth century, when most of these lawyers were born and raised, is exceedingly complex. It is only less difficult to rank by class special groups in the population such as the fathers or families of these lawyers. This I undertook to do, however, on grounds and along lines fully described in Miller, *supra* note 1, at 204-06. On the class structure of the population in the period, see especially MARTIN, *THE STANDARD OF LIVING IN 1860* (1942) and the citations there; and Tucker *The Distribution of Income Among Income Tax Payers in the United States*, 52 Q.J.ECON. 547 (1938).

for legal training or admission to the bar.¹⁴ That most of the lawyers studied here, however, were scarcely poor boys; that college for them, indeed, was largely a way simply to enhance for professional purposes social endowments that were already theirs at birth, is suggested by the data in Table VIII.

Though sometime late in the nineteenth century, writes Professor Adolf A. Berle, "the responsible leadership in social development" moved, in America, "from the lawyer to the businessman," the "position of the lawyer had an even greater appeal than before. It remained one of the careers through which a man could attain influence and

14. There is a good general discussion of legal education and admission to the bar in HURST, *THE GROWTH OF AMERICAN LAW* 256-285 (1950).

wealth even without having capital at the start.”¹⁵ This may remain a sound generalization still. But if one may generalize about lawyers from the evidence presented here on those who gained the greatest influence and wealth in politics and business as well as law, then it is clear that a considerable *social* capital at least helped smooth their way.

15. Berle *supra* note 3, at 341.

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